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## “The Rights of Stateless Persons must be Protected”

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Everyone has the right to a nationality. This right was already spelled out in the Universal Declaration of Human Rights and then repeated in several specialised treaties including the European Convention on Nationality of 1997. This also means that no one should be arbitrarily deprived of his or her nationality or denied the right to change nationality.

The right to a nationality has often been described as the right to have rights. This is because the attachment to a state entitles citizens to enjoy human rights in a more concrete and effective way than with reference to international human rights system alone. Yet nationality is not a pre-condition to enjoying human rights. Stateless persons, too, are rights holders under international human rights instruments. States are required to protect everyone, including those without any nationality, from human rights violations.

This is the challenge that stateless persons pose to the international human rights system. While we need to recognise and promote the right of everyone to a nationality, we must also ensure that statelessness does not result in violations of human rights. Statelessness should prompt the international human rights system to offer greater protection rather than exclude or forget stateless persons from its scope.

In fact, the plight of the stateless has received limited attention in recent years and seems to be little understood. Even the international treaties aimed at preventing the phenomenon have not been ratified by many member states. The UN High Commissioner for Refugees (UNHCR) believes that there are about 12 million stateless persons worldwide but recognises that this figure is uncertain, and there may be even more. The number in Europe is estimated to be 640,000. Some stateless people are refugees or migrants, having left their country of origin. Others live in their home country but are not recognised as citizens.

Political developments in Europe after 1989 led to increasing numbers of stateless persons, especially those belonging to national minorities. The breakup of the Soviet Union, Yugoslavia and Czechoslovakia caused enormous difficulties for people who were regarded by the new governments as belonging somewhere else - even when they had resided in their current location for many years.

Non-citizens tend to be marginalised. The exclusion of stateless persons from participation in the political process undermines the reciprocal relationship between duties and rights. Many face discrimination in their daily lives: they may be denied employment, housing or access to education and health care because they do not have personal identification documents that are valid. When travelling across borders they are particularly vulnerable – that is, if they can travel at all.

A great number of stateless persons are Roma. The problem exists in many countries, but it is particularly acute in the Western Balkans, notably in the countries of ex-Yugoslavia. Several thousand persons, among them many Roma, became victims of the decision in Slovenia in 1992 to erase non-Slovene residents from the Register of Permanent Residents. Many had moved to Slovenia from other parts of Yugoslavia before the dissolution of the federation. It was only in 2010 that this unjust regulation was changed through amendments to the law.

In other states in the Balkans, there are Roma who are without citizenship or even basic identity papers. Those who have moved from the former Yugoslav Federation to other parts of Europe often lack personal documents and live in legal uncertainty. They are *de facto* stateless. Their newborn children are frequently not registered and risk losing their right to apply one day for citizenship as they cannot prove legal residence in the country.

The Kosovo<sup>□</sup> conflict led to a large displacement of Roma primarily to Serbia, Bosnia and Herzegovina, Montenegro and ‘the former Yugoslav Republic of Macedonia’ but also to other countries outside the region. While in Kosovo\* recently, I met with one NGO which was working on a large civil registration project, hoping to register the 10,000 or 11,000 Roma who found themselves without papers.

Without personal identification documents the Roma are often denied human rights in the fields of education, healthcare, social assistance, employment, housing, freedom of movement and the right to vote. The exclusion and marginalisation that Roma persons already experience is therefore made worse by the lack of effective nationality. For those who are migrants or internally displaced as well, their situation is even worse.

For many Roma families, lack of documentation and the ensuing risk of statelessness is also a problem inherited through generations. This due to lack of awareness of the importance of civil registration, practical obstacles to civil registration (including fees) or discriminatory practices in the registration process. Lower levels of education have also made it all the more difficult for many Roma to acquire the documents needed.

When in Italy in January 2009, I was pleased to learn that the government was preparing draft legislation to provide Italian nationality to stateless minors whose parents had left war-torn former Yugoslavia, and where at least one of their parents was in Italy prior to January 1996. The government also announced that it would ratify the 1997 European Convention on Nationality without any reservation. When finalised, such legislative developments will benefit a number of stateless Roma children.

Both the UN Convention on the Rights of the Child and the International Covenant on Civil and Political Rights stipulate that children shall have the right to acquire a nationality. The host country has an obligation to ensure that children have citizenship. The statelessness of a child's parents is no excuse to deny children this basic right to a nationality. In December last year, the Committee of Ministers adopted a Recommendation on the nationality of children which gives guidance to member states on how to reduce statelessness among children.

Large numbers of residents in Latvia and Estonia, including children, remain non-citizens. I have recommended that steps be taken to grant citizenship automatically to children and to relieve older people from the requirement to go through the tests for naturalisation. The European Court of Human Rights has highlighted the obligation of states to effectively protect personal and family life in such situations.

Some progress has been achieved and the number of stateless persons in Latvia and Estonia has steadily fallen in recent years. Stateless persons with valid documentation from Latvia and Estonia can now move freely and work within the European Union. It is also important that stateless persons are made aware of the possibilities of gaining citizenship for themselves and their children.

The withdrawal of nationality is another problem which can lead to statelessness. In Greece, a Nationality Code caused the de-nationalisation of a large number of members of the Muslim minority in Thrace - many of them of Turkish origin. This provision was withdrawn in 1998, but the change did not apply retroactively which meant that Muslims who had lost their citizenship did not get it back. These people had to start a naturalisation process as if they were newcomers.

In Bosnia and Herzegovina, the authorities initiated a review of the citizenship granted since 1992 to a significant number of foreign nationals. It was argued that they had obtained their status through improper procedures during the chaotic war time situation and several hundred citizenships were revoked. In France, the National Assembly passed an immigration law in October 2010 which, if finally adopted, will increase the possibility of withdrawing citizenship from persons who have obtained this status within the last ten years and have committed a most serious crime.

There were some strong arguments in these cases, but revoking citizenship, when already granted, must certainly be regarded as a very serious action and should only be possible in extreme circumstances of deliberate deceit in the original application. Furthermore, the

withdrawal of nationality should not lead to automatic expulsions as the individual needs for international protection should always be considered.

The problem of statelessness in Europe must be given priority. Many victims have little possibility themselves to be heard and are in many cases silenced by their fear of further discrimination. Governments, ombudsmen, national human rights institutions, and non-governmental organisations must all take action for the rights of stateless persons. The universality of human rights is particularly relevant to the protection of the stateless. States should afford all persons equal protection of the law regardless of their nationality or statelessness.

The Council of Europe has adopted two highly relevant treaties to guide a rights-based approach towards nationality and statelessness. However, I am concerned at the slow pace of ratification of these conventions. Only twenty Council of Europe member states have ratified the 1997 Convention on Nationality. Moreover, only five states have so far ratified the 2006 Convention on the Avoidance of Statelessness in relation to State Succession. I encourage member states to sign and ratify these treaties.

The persistence of 'legal ghosts' in today's Europe is unacceptable. Council of Europe member states should protect the rights of stateless persons and adopt a proactive policy. Governments should realise that measures aimed at reducing and eliminating statelessness can prevent, as well as resolve, conflicts. This is one way of promoting social cohesion and universal rights in our societies.

*\* "All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo."*